

TESTIMONY SB 2345
Senate Human Services
January 20, 2023
Senator Kathy Hogan

Madam Chair and Members of the Human Services Committee, for the record my name is Kathy Hogan and I represent District 21.

SB 2345 is a bill that was worked on during the interim regarding Guardianship Services particularly increasing both monitoring and funding for these essential services. Over the last 25 years, the need for a more formal Guardianship infrastructure has become increasingly evident. As more vulnerable individuals, general elderly or seriously disabled, need assistance in making critical life decisions (financial and medical) and help in accessing needed services, the demand for private guardianships is increasing as has the amount of time court appointed guardians are expected to serve.

Fifty years ago, this function was primarily assigned to a county court appointed official called a public administrator. At that point in time, they typically spent 1 or 2 hours/month helping people without family in basic times like taxes, paying bills or finding housing. The roles and standards for guardianships have significantly increased without having increased funding.

With the ARC lawsuit settlement, a critical corporate Guardianships structure was established to provide those individuals with intellectual disabilities with this service. Catholic Charities of ND has managed that system for almost 30 years, but has consistently had waitlists because funding has been inadequate. Other elderly and disabled individuals have used a range of local/private options. Four years ago, we established a funding structure for those individuals that is coordinated through the NDACO's at no cost, but it also has not been able to meet the demand for service and current reimbursement levels are not adequate to cover costs for the services provided.

Finally, over the last 20 years there has been discussion regarding the role of the court in monitoring Guardianships regardless of their payment status, private, corporate, or non-profit. This bill supports and funds the Supreme Court to build a formal monitoring structure for all Guardianships. Over the decades we have had numerous complaints about abusive or exploitation by guardians and often investigating and addressing these challenges have been very limited.

Last week, the Senate passed SB 2224 which revised the basic framework for guardianship. This bill addresses the framework for provision of that service. The Guardianship team has reviewed and revised their initial costs and would like us to amend this bill to increase those costs. Their worksheet and number changes are attached.

Thank you for considering this critical bill and I would be more than willing to answer any questions.

SENATE BILL NO. 2345

Introduced by

Senators Hogan, Lee

1 A BILL for an Act to create and enact a new chapter to title 27 of the North Dakota Century
2 Code, relating to the task force on guardianship monitoring to promote the accountability of all
3 guardians; and to provide an appropriation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 27 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Task force on guardianship monitoring.**

- 8 1. The North Dakota supreme court shall establish a task force on guardianship
9 monitoring to address matters of guardianship accountability and further protections of
10 individuals under guardianship. The task force on guardianship monitoring must
11 include representatives from the guardianship monitoring program and protection and
12 advocacy project and individuals representing guardianship service providers, family
13 guardians, district court judges, and attorneys.
- 14 2. The task force shall recommend the regulations necessary to enhance the
15 guardianship monitoring program to investigate suspected guardian mismanagement
16 or illegal behavior. The regulations must include:
- 17 a. Appropriate certification, training, and background requirements for the guardian
18 investigator position relating to specialized training in guardianship services,
19 financial management, investigations involving allegations of neglect, abuse, and
20 exploitation of vulnerable adults, and training with the national guardianship
21 association's guardianship and conservator auditor and monitor investigator
22 program;
- 23 b. Procedures for investigating referrals from a judicial officer, the division of the
24 department of health and human services that oversees vulnerable adult

1 services, protection and advocacy, social workers, the ombudsman program, the
2 Medicaid fraud control unit, and any entity that oversees or provides services for
3 vulnerable adults;

4 c. Procedures relating to the investigation of a single guardian or an entire
5 guardianship service provider managed by a guardianship investigator; and

6 d. Any findings, recommendations, or improvements issued to the district court for
7 review.

8 3. The task force on guardianship monitoring shall make the recommendations under
9 subsection 2 to the supreme court. Upon receiving the recommendations, the supreme
10 court may adopt rules implementing the recommendations.

11 **SECTION 2. APPROPRIATION - JUDICIAL BRANCH - FULL-TIME EQUIVALENT**

12 **POSITION.** There is appropriated out of any moneys in the general fund in the state treasury,
13 not otherwise appropriated, the sum of ~~\$200,000~~ ^{288,998}, or so much of the sum as may be necessary,
14 to the judicial branch for the purpose of administering the guardianship monitoring program, for
15 the biennium beginning July 1, 2023, and ending June 30, 2025. The judicial branch is
16 authorized a full-time equivalent position to administer the guardianship monitoring program.

17 **SECTION 3. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET -**

18 **GUARDIANSHIP SERVICES.** There is appropriated out of any moneys in the general fund in
19 the state treasury, not otherwise appropriated, the sum of ~~\$3,270,454~~ ^{5,588,314}, or so much of the sum as
20 may be necessary, to the office of management and budget for the purpose of providing grants
21 for indigent guardianship services, for the biennium beginning July 1, 2023, and ending
22 June 30, 2025.

23 **SECTION 4. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**

24 **GUARDIANSHIP SERVICES.** There is appropriated out of any moneys in the general fund in
25 the state treasury, not otherwise appropriated, the sum of ~~\$577,579~~ ^{808,747}, or so much of the sum as
26 may be necessary, to the department of health and human services for the purpose of
27 increasing the reimbursement rate and the number of corporate guardianships for individuals
28 that receive developmental disability program management services, for the biennium
29 beginning July 1, 2023, and ending June 30, 2025.

PASS funding request breakdown:

\$20 per day for 481 PASS clients plus 115 new slots at 5 new clients each month	\$7,754,400
21-23 biennium deficit	\$283,914
Total appropriation needed 7/1/23 to 6/30/25	\$8,038,314
Current appropriation	\$2,450,000
Total increase needed for PASS next biennium	\$5,588,314

Corporate Guardianship for Individuals with Intellectual Disabilities funding request breakdown:

- From 7/1/21 to 6/30/22, corporate guardianship had a deficit of -\$63,882
- From 7/1/22 to 12/31/22, corporate guardianship has a deficit of -\$65,318
- Current daily rate of services for 499 individuals is \$8.56
- Needed daily rate to cover the actual cost of services (before a cost of living increase) is \$10.30 per day
- Daily rate with 5% cost of living increase for the first year of the biennium would be \$10.82; daily rate with a 5% cost of living increase for the 2nd year would be \$11.36
- Requesting funding for 30 additional slots to reduce our waiting list of 107 people
- Requesting additional funding for petitioning costs for the 30 new cases - \$75,000 (currently funded for \$125,195 – this would bring the total to \$200,195)

Current appropriation for corporate guardianships services for 499 people with intellectual disabilities	\$3,239,704
Funding for corporate guardianship in Governor's budget	\$3,679,797
Total funding needed for 529 people with intellectual disabilities (includes 30 new slots; \$200,195 petitioning costs – includes additional \$75,00 for petitioning costs for 30 new slots; daily rate of \$10.82 for 1 st year; daily rate of \$11.36 for 2 nd year)	\$4,488,544
Difference between Governor's budget request for Corporate Guardianship and the true needs of Corporate Guardianship	\$808,747

Funding appropriation needed for the guardian investigator: \$288,998

SB 2345 asks for an appropriation of \$200,000 for the guardian investigator. Below is the information that I received from Sally Howela, State Court Administrator, as to the amount that is actually needed which is \$288,998.

Sally's response: I wouldn't be comfortable having someone serve as an investigator with the anticipated scope of authority unless they had a law degree. That would bring the cost up to \$288,998, which would cover the salary & wages plus the furniture, equipment and IT needs required when adding a new employee

